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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.2803 of 1992

New Delhi this the 31st day of January, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member(A)

Shri U.S. Bisht
R/o C-8, 8427, Vasant Kunj,
New Delhi-110037.

...Applicant

By Advocate Shri R.K. Kamal

Versus

1. Union of India
through Secretary,
Min. of Defence,
New Delhi.
2. Engineer-in-Chief's Branch,
Army Headquarters,
Kashmir House,
DHQ PO., New Delhi.
3. Controller of Defence Accounts,
Headquarters 'G' Block,
New Delhi. ... Respondents

By Advocate Shri J.C. Madan, proxy counsel for Shri P.H. Ramchandani, Sr. Counsel

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, an erstwhile Senior Administrative Officer working under the Engineer-in-Chief in the Army Headquarters (MES) prays that the communication dated 10.02.1992 of the Engineer-in-Chief informing him that his representation dated 19.12.1991 addressed to the Secretary, Ministry of Defence and the Engineer-in-Chief had been rejected and that as per records available, no MES Officer of the grade of Senior Administrative Officer had been paid any Headquarter allowance, may be quashed.

2. A counter-affidavit has been filed on behalf of the respondents. Counsel for the parties have been heard.

3. The uncontroverted facts are these. Between 18.09.86 and 31.10.89, the applicant worked as a Senior Administrative Officer. On 01.05.74, the Government of India resolved that the special pay as Headquarter allowance should be given to Senior Administrative Officers. The payments to the then Senior Administrative Officers commenced with effect from

20th August, 1975. On 06.08.1976 this concession was withdrawn. This withdrawal was challenged by means of a Writ Petition in the High Court of Delhi sometime in the year 1979. The Writ Petition was numbered as CWP 178/79 and decided on 03.09.1980. The High Court quashed the order withdrawing the concession aforementioned. This order became final. On 09.06.1982, ~~an~~ another ^{order was passed. This} order was also challenged ^{successfully} in the High Court of Delhi by means of CWP No.887 of 1983 which was disposed of on 11.07.1984. Thereafter, Letters Patent Appeal No.121 of 1984 was preferred and in that an interim order was passed staying the operation of the judgment dated 11.07.1984. On 23.08.1991, the Letters Patent Appeal was dismissed with the result that the order passed by the Learned Single Judge of the Delhi High Court in CWP 887 of 1983 commenced to operate with full vigour.

4. On 19.12.1991, the applicant made a representation that since he had worked during the aforesaid period as Senior Administrative Officer and since Head Quarter allowance had been paid to some other Senior Administrative Officers in pursuance of the judgment of the Delhi High Court, aforementioned, he may be given the said judgment as well. His representation was rejected on 10.02.1992. Thereafter, the applicant came to this Tribunal by means of this O.A.

5. Two contentions have been advanced in opposition of this application. The first is that the payment of Head Quarter allowance has not been made to the Senior Administrative Officers working in the MES. This contention is based upon the contents of the impugned communication dated 10.02.1992. We have before us a communication of the Government of India in the Ministry of Defence dated 08.05.1992 addressed to the Chief of the Army Staff, New Delhi. The subject of this communication is: "Implementation of the judgment of the High Court in WP No.887 of 1983 and IPA 121/1984". It is recited in the said communication that the Delhi

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High Court had decided the Letters Patent Appeal filed by the Union of India against K.R. Swamy and Others of MES and the President had sanctioned the implementation of the order of the High Court in the above case in respect of a number of officers whereby they became entitled to the payment of special Headquarters allowance in terms of Government of India OM dated 20th August, 1985. This document clinches the issue that those working in the MES as Senior Administrative Officers were given the ~~said~~ allowance ~~pay~~ in pursuance of the aforementioned OM dated 20th August, 1985.

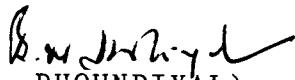
6. The other submission is that this is a belated application. We have already indicated that the judgment of the High Court whereby the impugned order was challenged was passed on 09.06.1982 and was subjected to a Letters Patent Appeal and in that appeal, an order of stay had been passed. Finally, the Letters Patent Appeal was decided on 23.8.1991. Thereafter, on 19.12.1991, the applicant made a representation and on 10.02.1992 the order of rejection of the representation was passed. It will be seen that the petitioner came to occupy the post of Senior Administrative Officer in the MES during the pendency of the Letters Patent Appeal aforementioned and during the continuance of the interim order passed therein. The applicant could, therefore, legitimately claim the ~~said~~ allowance ~~pay~~ only after the decision in the Letters Patent Appeal. He did so. Therefore, it cannot be said that, in the facts and circumstances of the case, this is a belated application. Even otherwise, justice and fair play demands that the applicant should be put on par with the other officers (Senior Administrative Officers), who had rendered services similar to the applicant and were paid the said allowance.

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7. This petition succeeds and is allowed. The impugned order dated 10.02.1992 rejecting the representation of the applicant is quashed. The respondents are directed to strictly adhere to the judgment given by the High Court on 11.07.1984 in CWP 887 of 1983 and upheld in Letters Patent Appeal in 121 of 1984 on 23.08.1991. The respondents shall, therefore, compute the arrears of the ^{said allowance} of the applicant and pay him the same within a period of 3 months from the date of production of a certified copy of this order before the relevant authority.

8. There shall be no order as to costs.


(B.N. DHOUNDIYAI)

MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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